IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3461 of 2006
with
CIVIL APPLICATION No.10764 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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E.S.I.C.
Versus
VIMLABEN JASHWANTBHAI BAROT

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Appearance :

MR SACHIN D VASAVADA for the Appellant

None for the respondent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 26/02/2007

ORAL JUDGMENT:

By filing this appeal the Employee State Insurance Corporation has challenged the judgment and order passed by the ESI Court, Ahmedabad dated 25th April 2006 by which the trial Court has allowed the appeal filed by the dependents of the deceased employee, namely, late Shri Jaswantbhai Vadilal Barot. The Employee's State Insurance Court after appreciating the evidence on record has come to the conclusion that, the deceased was suffering from Byssinosis, which is considered to be an employment injury. It is also found by the ESI Court that the concerned employee has died during the course of employment as he contacted infectious disease because of the nature of employment. The ESI Court accordingly awarded the amount to the dependents of the deceased employee against which the Employees State Insurance Corporation has filed this appeal under Section 82 of the Employees State Insurance Act, 1948.

2) Mr Sachin Vasavada, learned advocate for the appellant has taken me to the judgment of the ESI Court and submitted that only substantial question which arises for the consideration of this Court is that when the Medical Board has assessed the permanent disability at 59% the ESI Court should not have assessed the disability at 100%. He has also submitted that so far as disease Byssinosis is concerned, the said disease is curable and the employee was suffering from the aforesaid disease as he was in habit of smoking, which fact has not been considered by the ESI Court. He also submitted that disability of the concerned employee should have been assessed at 59% and not at 100% and the appellant – Corporation has no objection if the disability of the employee is assessed at 59%.

3) I have heard the arguments of Mr.Vasavada. I have also gone through the order of the ESI Court. The ESI Court has found that deceased employee-Jaswantlal Barot was serving in Spinning Department of New Cotton Mills No.2 since 1972 and he was required to check the cotton and was also required to take cotton back in the Spinning Department. As the aforesaid mill was closed, since last eight years, deceased used to do same work with Ashima Textiles. It is found by the ESI Court that on appreciating the evidence, it can be said that the deceased came in contact with dust and other such things, which affects the lungs. It has also been found by ESI Court that deceased was having breathing trouble and he was used to keep pump with him. Initially, when the claim was filed, the deceased was alive and his evidence was recorded at Exh.20, wherein he has stated aforesaid fact. The ESI Court has also considered Item No.3 of Schedule No.3 of the ESI Act, 1948 in which said disease is considered to be an occupational disease. The ESI Court has rightly found that the deceased came into contact with said disease because of the nature of work, which he used to do in the mill.

4) The ESI Court has also considered the evidence of Dr.Ravindra Lodha at Exh.35, who was discharging his duty as Neurosurgeon. Said doctor has also stated before the Court that deceased was admitted in the hospital as an indoor patient between 20-10-2004 to 25-10-2004 as he was suffering from paralysis on the right side of his body and he was having breathing problem. It was also stated by said doctor that sufficient quantity of blood was also not reaching to the brain of the deceased. The ESI Court has also considered the evidence of Dr.Dineshbhai Savjibhai Sandana at Exh.40, who had also treated the deceased in the past. The case of the deceased employee was referred to Special Medical Board, which had assessed the disability at 59% (at that time, the deceased was alive). The ESI Court has also considered the

judgment of this Court reported in 1991 (1) GLH 66, wherein it is held that at the time of assessing disability of the employee, the aspect about decrease in his ability to work is required to be considered. After considering various judgments of this Court as well as after considering the provisions of law, the ESI Court came to the conclusion that it cannot be said that the concerned employee was physically fit and was able to discharge the same duty which he used to do before he received said employment injury. It has been found that because of the said occupational disease, the deceased employee was not in a position to discharge the same work, which he used to do. After considering medical evidence, nature of injury and disease in question, the ESI Court has assessed the disability at 100% and cogent reasons are given for such finding. The ESI Court has also considered the medical evidence to the effect that disease in question, namely, Byssinosis is not curable, because of which the employee had died on 12-11-2004. Said fact is established in view of certificate at Exh.41 given by Shreeji Clinic and Nursing Home.

5) Considering the reasoning given by the ESI Court, in my view, it cannot be said that ESI Court has committed an error in assessing the disability at 100%. The ESI Court has given cogent reasons for reaching to the aforesaid finding of fact, which, in my view, is not required to be interfered with in this appeal, which is maintainable only on substantial question of law.

6) Mr.Vasavada submitted that the percentage of disablement arrived at by Medical Board should not have been increased by ESI Court merely on some *ipse-dixit*. However, in my view, it cannot be said that ESI Court has assessed the disability at 100% merely on *ipse-dixit,* as cogent reasons are given by the ESI Court. Therefore, I do not find any

substance in this appeal. The ESI Court is perfectly justified in assessing the disability at 100% and no question of law, much less substantial question of law arises in this appeal, hence, this Appeal is dismissed at admission stage.

7) In view of above order on main appeal, no order on Civil Application No.10764/2006.

(P.B.MAJMUDAR, J.)

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